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Questions on secrecy in Britain

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LONDON — He is a thin, drawn-looking man, dressed in the kind of nondescript dark blue suit that seems to be the uniform of government bureaucrats the world over.

The Old Bailey, London's Central Criminal Court, is an unlikely place for him. He seems dwarfed by the massive building, located on a site where public executions once took place — hardly an appropriate venue for a civil servant who says he was just doing his job.

But Clive Ponting's view of his job is at odds with the views of his employer, Her Majesty's government, and that is why last week he went on trial for allegedly violating the Official Secrets Act by leaking sensitive information about Britain's conduct during the 1982 Falklands War.

The trial, which began Monday and is expected to continue through this week, is being watched closely as a test case of the controversial Secrets Act, often a target of proposed reform that has managed to survive intact despite numerous efforts to abolish it.

The trial speaks to one of the classic dilemmas of a modern bureaucra-

cy, particularly in wartime; that is, the natural conflict between the desire for secrecy by those running the government, and the desire for information by those outside. Just who is Clive Ponting responsible to? His superiors at the Ministry of Defense? Or the Parliament and the public?

Occurring as it does nearly three years after the Falklands conflict, the trial also vividly illustrates the

still-lingering doubts raised by Britain's conduct in a war 8,000 miles away that it supposedly won but to which it hasn't yet become completely reconciled.

The demise of the General Belgrano, a 10,650-ton Argentine cruiser, is what most often fuels doubts.

According to the official British record of the Falklands War with Argentina, Prime Minister Margaret

Thatcher and her war cabinet ordered an attack on the vessel out of concern that British ships were threatened. A submarine tracked the Belgrano for more than 30 hours and then fired two torpedoes that sent the cruiser down in minutes, killing 368 Argentines.

But not everyone is satisfied with the official explanation. The most

ardent critic of the government's handling of the Belgrano is Tam Dalyell, a Labor Party member of the House of Commons. Dalyell contends that the cruiser was 250 miles from the Falklands, heading for Argentina. Instead of acting to protect British ships, he says, the government ordered the attack on the Belgrano to prolong the conflict, derail peace initiatives and bolster Thatcher's political standing at home.

Dalyell and another member of Parliament formally questioned the government about the Belgrano, and officials at the defense ministry were called upon to reply. That is where Ponting enters the story.

Ponting, now 38, was an assistant secretary at the ministry and an adviser to Defense Secretary Michael Heseltine. He joined the civil service in 1970, and rose quickly through the ranks to become responsible for directing the annual defense budget.

Ponting became involved in drafting replies to letters and questions on the Belgrano, and also prepared a narrative of the sinking for Heseltine that is now known as the "Crown Jewels."

(Based on the prosecution's argument that the Crown Jewels contained sensitive military information, the judge last week allowed it to be read and discussed in court — but only in secret.)

Ponting was arrested last year and accused of passing two of those docu-

ments to Dalyell — a draft of replies to questions by Dalyell on the Belgrano's sinking, and a paper by another defense official on how to handle questions from a Commons select committee investigating the sinking.

When the trial opened, Ponting acknowledged that he gave the docu-

ments to Dalyell, so that is not at issue in this trial. Instead, the jury will have to decide whether Ponting violated the law by doing so, or whether, as he contends, he was just following his duty as a civil servant loyal to the Crown.

"This is not a case about spying."

Ponting's attorney, Bruce Laughland, told the court. "It is a case about lying or misleading Parliament."

The proceedings in Courtroom No. 2 at the Old Bailey last week under-

lined the stark differences between the British and American legal systems brought out in this case.

Some of the contrast was purely cosmetic: The two men defending Ponting and the two prosecutors wore long black robes and cream-colored wigs fringed with curls that barely covered the tops of their heads, while the judge sat resplendent in a fire-engine red robe with thick white furry cuffs.

But the real contrast was substantive. For while the trial at times lapsed into detailed testimony about which defense ministry official said what about various documents, the crucial question in the case is the jury's interpretation of the Official Secrets Act. And there the contrast with American law is most pronounced.

Ponting is accused of violating Section 2 of the 1911 law, which makes it unlawful for a civil servant to communicate any document or information to an "unauthorized person." The problem is that the law makes little attempt to define who such a person is.

Noting the vagueness of the definition, an official committee set up to review the law in 1971 said that Section 2 should be abolished and replaced by an Official Information Act. Numerous politicians have since said the same thing, but their pledges have never been carried out. A campaign for a freedom of information bill is to begin in earnest in

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Parliament this month, but so far has received little interest from the Thatcher government.

The contrast with U.S. secrecy law was highlighted by a report issued last week by the Policy Studies Institute, a nonprofit independent research organization with offices within earshot of Parliament and the government offices at Whitehall.

"One political system which has tackled squarely the dilemmas implicit in the Ponting case is the United States," the report said. It cited laws passed by Congress after Watergate that clarify the rights and duties of civil servants and delineate the proper limits of official disclosure.

"It has always been difficult to prosecute American civil servants for leaking information unless the disclosure amounted to espionage," the authors said. Then they concluded: "It is most unlikely that an American civil servant in circumstances comparable to Mr. Ponting's could be convicted of any criminal offense under United States law."

Meaty issues such as that one have yet to be addressed generally in Britain, but discussion of them will no doubt occur once Ponting's own testimony gets under way. Ponting took the witness stand for 45 minutes on Friday afternoon — barely enough time to flesh out the details of his job at the defense ministry.

His testimony is to continue tomorrow.